

# MINUTES OF PLANNING AND ZONING COMMISSION FOR MAY 08, 2001 MEETING

**MEMBERS PRESENT:** Randy Jones, Jan Russell, David Wright, Bill Williams  
and Lupe Lozano

**MEMBERS ABSENT:** Tom Carson, Robin Byers

**STAFF PRESENT:** Paula Krum - Administrative Assistant  
Roy Lewis - Building Official

**VISITORS PRESENT:** LIST AVAILABLE

**MEETING OPENED:** 4:05 P.M. **MEETING ADJOURNED:** 4:48 P.M.

## **APPROVAL OF MINUTES OF APRIL 10, 2001 MEETING:**

Bill Williams asked the board members for a motion to approve the minutes of the April 10, 2001 Planning and Zoning Commission Hearing. David Wright made a motion to approve the minutes as presented. Jan Russell seconded the motion and the motion passed with the following vote:

5  AYES,  0  NAYS,  2  ABSENT, AND  0  ABSTENTIONS.

## **ACTION ITEMS:**

### **CONSIDERATION AND ACTION ON THE SITE PLAN REVIEW FOR APPLEBEE'S NEIGHBORHOOD GRILL AND BAR, CASE # PZ-10-01:**

Rick Malone with BSW International, Tulsa, Oklahoma, informed the board that their company represents the Civil Engineers on the Applebee's Neighborhood Grill and Bar. He stated the following items have been addressed and reported:

- The fire lane striping around the building as requested by the Fire Marshal, Don Blanton, was complete. This request by the Fire Marshall insured that the fire trucks and equipment would have access around the entire building during an emergency situation.
- The monument sign square footage to meet the sign ordinance of the I-35 Corridor Code was discussed. The attached signage, a typical Applebee's sign, will be on the

building and additional signs will be in the form of marquees coming into the shopping center. At this time, BSW International is not asking for any additional signs.

- The existing sidewalk to the mall is now a striped pedestrian sidewalk.
- The request of Detail C - 5.2 (Detail 7 on the sheet Mr. Malone passed out to the board members) stated that it must meet North Central Texas Council of Government Standards. Mr. Malone was uncertain of what the NCTCG Standards were. As soon as he receives the information, the engineers will include it on the plans. Signed and sealed documents will be delivered to the Building Official. The Building Official stated that he had this information in his office. This article will address the culvert collection.
- The requested revision of the Utility contacts has been completed.
- The TxDOT Right of Way permit with an utility frontage was addressed. Mr. Malone stated that he had an approval letter from Texas Department of Transportation. He will supply the board members with a copy of this letter.
- Mr. Malone informed the board that there was an agreement between Applebee's Restaurant and the Prime Outlet Mall called a Shared Parking Agreement. Applebee's Restaurant will be using the parking area as a lease spot for the restaurant and Applebee's Restaurant will not be taking title to or ownership of any parking.
- The Building Official stated that his understanding was Applebee's Restaurant will use the main entrance to the mall as access to the restaurant. Mr. Malone said that this is a correct statement.
- Bob Thomas, an architect with the Embry Group, Georgetown, Texas, for Applebee's Neighborhood Grill and Bar, addressed the board. He requested the approval of the design of the restaurant. He stated that the design of the restaurant was used by Applebee's Restaurant for small towns and was called a Star Prototype. He showed a picture of the design to the board.

Bill Williams asked Roy Lewis, Building Official, if there was any additional information that the engineer or architect needed to present to the board at this time. Mr. Lewis stated that they have met all the requirements to date that was asked from them.

Bill Williams asked the board if the site plan for review should be presented to the City Council. Jan Russell made a motion to recommend to the City Council that the site plan be approved. Randy Jones seconded the motion and the motion passed with the following vote:

5  AYES,  0  NAYS,  2  ABSENT, AND  0  ABSTENTIONS.

**CONSIDERATION AND ACTION ON A REQUEST FOR A SIGN VARIANCE FOR A SIGN PAINTED ON THE BUILDING LOCATED AT 109 NORTH RUSK STREET. CASE # PZ-12-01.**

Bill Williams asked the board to address Item Number 5 on the agenda concerning a sign painted on the front side of a building owned by Johnny Leftwich, located at 109 N. Rusk Street. Johnny Leftwich informed the board that he was not aware of the sign ordinance concerning signs painted on buildings. He was under the understanding that the sign ordinance was for the signs over streets and sidewalks. He stated that the occupants of the building have opened a beauty shop in a building owned by Mr. Leftwich located on Rusk

Street. Before Mr. Leftwich could gather information concerning signage, the occupants of the building had contracted a professional painter to paint a sign on the sides of the building. Mr. Leftwich was satisfied with the work and approved of the appearance of the signs. He requested that the signs be approved to allow for the signs to stay on the building. Bill Williams agreed that the signs painted on the building was tastefully done and look nice. Jan Russell asked if a professional painter did the work and Mr. Leftwich stated that Tom Otto painted the signs on the building. The painted sign is within the square footage of signs allowed to be painted on a building. Jan Russell asked if this sign met all the requirements for signs according to Sign Ordinance. The Building Official stated that other than the statement about a sign painted on a building, the sign was within the regulations of the Sign Ordinance. He stated that this issue was for a variance of the Sign Ordinance, to allow a sign to be painted on the side of a building.

Bill Williams asked the board for a motion to grant a variance to the Sign Ordinance allowing the sign painted on the side of the building located at 109 North Rusk Street. David Wright made a motion to grant a variance to the Sign Ordinance allowing the sign to remain on the building owned by Johnny Leftwich. Lupe Lozano seconded the motion and the motion passed with the following vote:

5  AYES,  0  NAYS,  2  ABSENT, AND  0  ABSTENTIONS.

David Wright suggested that a letter be mailed to all the sign makers in Gainesville informing them of the rules and regulations of the Sign Ordinance. Bill Williams told the Building Official to make an effort to inform all the sign makers about the rules and regulations regarding signage in the City of Gainesville. This information given to the sign makers would make them aware of the Sign Ordinance and the sign makers would be responsible for following the regulations of the Sign Ordinance.

**CONSIDERATION AND ACTION OF THE REQUEST TO STREET NAME CHANGES OF NEWLY ANNEXED PROPERTY AND UPDATE THE NAMES OF EXISTING ROADS. CASE # PZ-11-01.**

Bill Williams asked the board to shift back to Item Number 4 on the agenda regarding the consideration and action of the request to change the street names of existing roads that have been newly annexed into the City of Gainesville.

Item #1 - The road from US Highway 82 North to I-35, a request has been submitted to change the name of FM 372 to North Grand Avenue. Roy Lewis explained to the board the request to change the name of the road was a result of a representative of the US Postal Service informing Mr. Lewis that the Post Office was receiving returned mail. The addressing in the area of North Grand and the recently annexed area of FM 372 was confusing to the mail carriers. The Postal Service requested that steps be taken to correct this problem. Bill Williams asked the board if there were any problems in the changing of the name of FM 372 to North Grand Avenue. The board members did not have a problem with the name change.

**Item #2 - The road from old city limits at the North end of Weaver Street near the BNSF Railroad tracks to the intersection with CR 181 has been requested to be changed from CR 137 to North Weaver Street. Bill Williams asked the board if they had any reservations to the requested name change of the road. There were no reservations or comments made by the board. Mr. Williams stated that the request to change the name of CR 137 to North Weaver Street is approved.**

**Item #3 - The road from the East end of Prime Outlet Boulevard to the intersection of CR 181 has a request to change the name of CR 137 to North Weaver Street. Johnny Thompson addressed the board stating he felt this road was an East to West road. The small stretch of road would be better if it was dedicated all the way as Prime Outlet Boulevard instead of having the small stretch of road called North Weaver Street. The Building Official, Roy Lewis, stated that his thoughts were that "if we went up CR 137 further, it would make Weaver Street continuous by having the little piece there called Weaver Street." Bill Williams agreed with the Building Official. He remarked that Prime Outlet Boulevard would stop the road's easterly direction at the intersection of CR 181 instead of the road coming south. Jan Russell also agreed with Mr. Lewis. Bill Williams asked Johnny Thompson if he had a problem with the reasoning of the Building Official and Mr. Thompson stated he had no problem with Mr. Lewis's opinion. Mr. Williams said that he felt it would be better to let Prime Outlet Boulevard stop at the intersection of CR 181 and told Mr. Lewis that he was correct by stating if there were another annex this name change would help in this annexation. Mr. Williams stated that the name change request for CR 137 to be changed to North Weaver Street.**

**Item #4 - The request to change the name of the road at the East end of East Broadway Street at Wheeler Creek, to the current City Limits at the East side of the Summerfield Addition be changed from FM 678 to East Broadway Street. Mr. Williams stated that this road name change would stop at the State School's property and would go back to FM 678 at the property line of the State School. Mr. Williams asked the board if they had any problem with the requested name change and the board did not have any problems with the request. The road located at the East end of East Broadway Street at Wheeler Creek, to the current City Limits at the East side of the Summerfield Addition will be changed from FM 678 to East Broadway Street.**

**Item #5 - The request to change the name of the road, located at the intersection of East US Highway 82 at Radio Hill Road, to the South city limits on FM 3092 be changed to Radio Hill Road. Mr. Williams called this road the Lake Kiowa Road. The Building Official stated that the requested name change was from the old city limits where the old railroad right of way is located. He stated that this road has been called Radio Hill Road for over forty (40) years but this name of the road had not been officially named Radio Hill Road. Mr. Williams and the board members did not have any reservations about the requested name change. The road located at the intersection of East US Highway 82 at Radio Hill Road, to the South city limits on FM 3092 was agreed by the board to be changed to Radio Hill Road.**

**Item #6 - The request to change the name of the road called CR 208 to Harris Street from the Old East City Limit line East to Radio Hill Road (FM 3092). Mr. Williams stated that this**

request to change the name of CR 208 to Harris Street would keep this road in line with the other name change requests. The board had no problems with the request name change from CR 208 to be changed to Harris Street. (Note: Some maps call this CR 2120.)

Mr. Roy Lewis asked the members of the audience if they had any questions. Ms. Barbara Bloom residing at 3110 CR 137 stated she has lived in the same house for twenty-seven (27) years. She recalled several name changes to her address during this time. She requested the board to decide on the name change of CR 137 to Broadway Street be the final change. She stated that there were numerous costs involved in the changing of her address including stationary and postage. She said that every time there is a change to her address she has problems with the Post Office and does not receive all her mail. She requested this change to be permanent. Mr. Williams asked her if there was any vacant land around her property and she stated that there was no vacant land around her property. Mr. Williams stated that there could be a problem if houses were built on any vacant land, in the numbering of these houses. He stated to Ms. Bloom that the board could not guarantee her that this would be the final change to her address. It was the belief of Mr. Williams that this would be the last change to her address but with no guarantees that there will not be any other changes.

Mr. Williams asked for the motion approving the change of the names of roads as presented. Jan Russell made a motion to approve the requested name changes of roads as presented. Randy Jones seconded the motion and the motion passed with the following vote:

5  AYES,  0  NAYS,  2  ABSENT, AND  0  ABSTENTIONS.

#### **CONSIDERATION AND ACTION AND THE REVIEW OF THE DRAFT OF THE ZONING ORDINANCE CHANGES.**

Mr. Williams asked The Building Official, Roy Lewis to go over the changes of the Zoning Ordinance with the board. These changes are concerning the commercial districts of the City of Gainesville. He stated that he has reviewed the existing Zoning Ordinance and has made changes to the ordinance he felt need changing or had been recommended to have changed. He stated to the board that the proposed changes were underlined in the documents presented to the board. He requested the board to comment on his proposed changes to the Zoning Ordinance.

Jan Russell asked why everything was listed in the Zoning Ordinance. Roy Lewis replied saying that the listings came from the existing matrix that is in the current Zoning Ordinance. She stated that the City Attorney informed the board that if there was no listing, items could be listed as needed and she believes that there was no way everything could be listed. Mr. Lewis stated that there was a clause to be added stating that if items were not listed and two of the three people stated in the ordinance agreed to list the item, the listing would be allowed. He also stated that the listings are from the existing matrix that is currently in the Zoning Ordinance.

Roy Lewis directed the board members to review page 81 of the Zoning Ordinance Revisions. He informed the board that everything he had underlined is being revised upon approval of the board. Mr. Williams feels that this page is unclear and feels by listing and leaving one

item out could possibly create a legal issue. Randy Jones suggested to add a clause or phrase for "Prohibited Uses". He suggested that a phrase of "ANY USES THAT ARE NOT LISTED" could be added to the Prohibited Uses clause. Mr. Jones felt that this statement could be a "catch all" phrase and could help the board and the officials to not get into trouble because of the wording included in the Zoning Ordinance. Roy Lewis and several of the board members felt by adding "Any uses that are not listed" would be good for the Zoning Ordinance.

Mr. Lewis requested the board to review page 87 of the Zoning Ordinance Revisions. Randy Jones commented that there was an error on page 87. In Item A, the last word should be "attacks" instead of "addiction". Mr. Lewis insured the board that upon final edit, all errors should be corrected.

Jan Russell made a comment concerning page 83 of the Zoning Ordinance Revisions. Under the Tattoo or Massage Parlors, she needed clarification on how to distinguish between Massage Parlors and Physical Therapy, and Message Therapy businesses. Mr. Lewis told Mrs. Russell that a definition from the "Sexually Orientated" Business Ordinance. A question from Mr. Jones stated how to draw the line between a sexually orientated business and a physical therapist or chiropractor business. Mrs. Russell stated that the persons in charge of these business must be registered (example: a Registered Message Therapist) and that this would help in the separation of a sexually orientated business verses a physical therapist business. This would require these companies to be registered by the State of Texas and would legitimize all business in this field.

Jan Russell asked why churches and schools are prohibited in commercial zoned districts. David Wright suggested that this clause be pulled out from the Zoning Ordinance. Mr. Williams stated that churches and schools cannot be located within a certain number of feet from a sexually orientated business. Also, if an established business in the commercial zoning district is in business, a school or a church could not be built in the area for sole purpose to force the questionable business to close or go out of business. Mr. Lewis stated that he would take a look at this statement in question and omit it from the Zoning Ordinance.

Mr. Williams directed the board members to review page 84, and the item concerning "Beer and Liquor Sales" of the Zoning Ordinance. Mr. Lewis stated that an ordinance would possibly be created to clear up questions on this issue. Mr. Jones asked that if there is a vote on the issue of the ability of Gainesville to sell liquor and beer, and the vote passed would it override all of the current ordinances. Mr. Williams stated that he felt that a passing vote in favor of the selling of liquor, wine and beer in the City of Gainesville would override existing ordinances.

Randy Jones stated he had a question regarding information listed on page 92 - 93 of the Zoning Ordinance Revisions. Concerning the Historic Structures statement that reads that structures over eighty (80) years old should be restored and preserved whenever possible. Mr. Jones suggested that the phrase "whenever possible" should be omitted from the Zoning Ordinance and Mr. Lewis agreed and stated that he would drop the phrase. The reason

behind the omission of the statement containing “whenever possible” is because an historic ordinance is to be created that would clarify issues of this nature.

Jan Russell requested the board review page 89, Item 5 concerning the Central Area Zoning Districts. In regards to supplies and material laying around the perimeter of these businesses, a Special Use Permit would be required to allow supplies and materials to be placed outside around a business. Mr. Lewis stated that in the future, the board or the City of Gainesville may not want this type practice to be tolerated and by having businesses apply for a Specific Use Permit would allow the board to control what business can keep supplies and materials outside and around their buildings.

Lupe Lozano requested the board to review page 85 of the Zoning Ordinance Revisions. She wanted to know what was the difference between beverage machines and news paper racks around businesses. Mr. Lewis stated that it would be undesirable to have beverage machines and other miscellaneous items sitting out in front of a business on the side walk. He stated that if a business wanted to put a beverage machine in front of their business, the business owner would need to request permission and approval from a person of authority before placing the machine in front of the business. Mr. Williams stated that if this was not the correct way of regulating beverage machines and other miscellaneous vending machines, then every business could put one of these machines outside. He stated that this could include phone booths.

Jan Russell encouraged the board to review page 92 concerning front yard set backs. She read the ordinance stating that the existing set backs were zero feet (0') front yard set back for existing structures and a ten foot (10') front yard set back for new structures to allow enough room for landscaping. Mr. Lewis stated that currently there is no set back required in Central Area Zoned Districts. If a building burned down and another building was built to replace the damaged structure, enforcing the ten foot (10') front yard set back would allow the owners to comply with the landscape ordinance currently in effect. Randy Jones agreed with Mr. Lewis and added that the new structures should conform with the “style that is present” when building a new structure. David Wright stated the side yard setback requirements should be omitted from the Zoning Ordinance for the Central Area Zoning Districts and Mr. Lewis agreed.

Mr. David Wright stated that he had spoken with Carlos Vigil concerning a Broadway and California Street overlay. He asked Mr. Vigil about including Main Street and the board felt that it would be a good idea to include Main Street in with the overlay.

Randy Jones asked the board that if the phrase of “Any item not listed” was included in the Prohibited Uses portion of the Ordinance, would it be repetitive to then list items. Mr. Lewis stated that he was going to use the City Attorney’s statement of “Any use not listed.....” and include this statement in the Zoning Ordinance. Mr. Williams asked Mr. Lewis if the City of Gainesville is going to hire a new City Attorney. Paula Krum stated that the position for City Attorney is currently open. Mr. Williams feels that there is a possibility of change with a new City Attorney. Mr. Lewis stated that he was instructed to prepare the ordinances and send them through to the City Council and give the City Attorney copies of what is going

to the City Council for her to use as a reference. Until Mr. Lewis receives further instructions, this is the method he will use in the preparation or amendment of ordinances.

Mrs. Jan Russell asked the board, regarding page 130, Item 5 - Sidewalks, if this issue should be reviewed under the Multiple Family Dwelling part of the Zoning Ordinance. Mrs. Russell stated that she felt that sidewalks should be placed around these dwellings and Mr. Williams agreed. Mr. Williams sees this issue as a safety issue for the residences of the Multiple Family Dwellings. Mrs. Russell agreed stating that by having no sidewalks is a safety issue for the children playing around the multiple family dwellings. Mr. Lewis asked the board to verify if their meaning of Multiple Family Dwellings included apartment complexes or duplexes and up in regards to sidewalks and curbing. Mr. Jones feels that any structure over a four (4) Plex and up should have curbing and sidewalks. Mr. Lewis stated that this issue can be addressed during a site plan review meeting with the owners and architects of a new Multiple Family Dwelling complex. During a site plan review meeting, the Building Official would inform the property owner that sidewalks are required.

Randy Jones requested the board to review page 119 of the Zoning Ordinance Revisions concerning Specific Uses Permit Procedures for storm drainage. He read the ordinance revisions that included if someone was applying for a Specific Use Permit, they would be required to provide the names of property owners, records of all adjacent property, and storm drainage calculations. He feels that someone wanting to open a day care facility in their home and the person would be burdened to obtain and present these types of documents before they are granted a Specific Use Permit. Mr. Lewis stated storm drainage calculations are required for new and large construction projects. He stated that this issue will be included in the City of Gainesville's Drainage Ordinance, and a person who wanted to open a day care facility in their home would not be required to provide drainage calculations because this requirement is for new structures only. The part about providing the names of property owners and records of all adjacent property owners is helpful to the Planning and Zoning Department when mailing notifications regarding Specific Use Permit applications. Mr. Lewis stated that he will omit the storm water drainage calculations because it will be addressed in the Drainage Ordinance of the City of Gainesville. Mr. Lewis informed the board that the first SUP has been requested and that in the granting of this permit, careful attention will be taken to insure that everything is correct and is presented as required by the current ordinance.

David Wright asked the board to review page 121, paragraph 1. He felt that the statement that includes "within six (6) months and no more than four (4) months" should be rewritten or the ordinance should use another statement. Mr. Wright said that as the ordinance reads currently, the applicant is given a sixty (60) day window to apply for renewal of a Specific Use Permit. Mr. Lewis stated that he felt using the word "months" instead of "days" would better clarify the statement.

Jan Russell stated that she felt the Sign Code Regulations should be discussed. Mr. Lewis stated that the Sign Ordinance will be revised. Mrs. Russell guided the board to review page 140 of the Zoning Ordinance Revisions. She stated that the Sign Code is circular and keeps on going without any definite statements. Mr. Lewis stated that he is currently working on a

supplement to the Sign Code Ordinance. This supplement would be used until he could rewrite the Sign Ordinance.

Randy Jones directed the board to review page 143 of the Zoning Ordinance Revisions, paragraph four (4). He feels that the wording that includes "Non Conforming" should stay in the ordinance because it would allow better control in enforcing the ordinance.

Randy Jones stated that on page 147 regarding Alternate Board Members for the Planning and Zoning Commission, the statement requiring two alternate board members should be omitted from the ordinance, in his opinion. Mr. Williams feels that if there are no alternates for the Planning and Zoning Commission, then we need to have two (2) people appointed for these positions.

Randy Jones asked David Wright if he (Mr. Wright) is the Vice Chairman of the Planning and Zoning Commission. Mr. Lewis stated that this issue should be added to the next Planning and Zoning Agenda and that the board needs to elect positions and hold the swearing in process for board members. Mr. Williams added that the Mayor of the City of Gainesville has to appoint people for board positions. Mr. Jones agreed that this issue should be placed on the next agenda.

Jan Russell requested the board to review page 149, paragraph one (1) of the Zoning Ordinance Revisions. She asked if this paragraph is a legal requirement. She stated that this paragraph negates anything the board would rule on. Mr. Jones asked if there was an appeal board for Planning and Zoning. Mr. Lewis suggested that appeals for this board might need to go before the City Council. Mr. Jones stated that if issues were negated, the negotiations should be by elected officials and not other appointees. Until this issue is resolved, Mr. Lewis stated that he would adjust the wording to include the City Council as the appeal board for the Planning and Zoning Commission. Mr. Lewis stated that everything underlined in the Zoning Ordinance Revisions, in regards to this paragraph is not in writing. The ordinance appointing the Planning and Zoning Commission is two (2) paragraphs long and does not specify anything.

Jan Russell suggested that the Sign Code and the Zoning Appeals Board should not have any action taken by the Planning and Zoning Commission until the legal issue is resolved.

#### **ADJOURNMENT:**

Mr. Bill Williams, President of the Planning and Zoning Commission, asked for any new business and for any old business. With no other business to discuss, Mr. Williams adjourned the meeting of the Planning and Zoning Commission of May 8, 2001 at 5:06 PM.

PK prepared min.